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Supreme Court, U.S.
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ALEXANDER L. STEVAS
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NO. 84-1963

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1985

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R. O. GIVENS SIGNS, INC.,
Petitioner

v.

TOWN OF NAGS HEAD; DEPARTMENT OF TRANSPORTATION OF THE STATE OF NORTH CAROLINA; UNITED STATES DEPARTMENT OF TRANSPORTATION; ELIZABETH H. DOLE, SECRETARY OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION; RONALD E. HEINZ, DIVISION ADMINISTRATOR OF THE FEDERAL HIGHWAY ADMINISTRATION; T. L. WATERS, MANAGER OF PLANNING AND RESEARCH BRANCH OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; and WILLIAM R. ROBERSON, JR., SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION;
Respondents

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BRIEF IN OPPOSITION

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Dated: July 15, 1985

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QUESTION PRESENTED

Did the District Court and the Court of Appeals correctly hold that Petitioner's claims, litigated to final judgment in the courts of North Carolina, were barred by the doctrine of res judicata?

TABLE OF CONTENTS

QUESTION PRESENTED. i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES. iii

STATEMENT OF THE CASE 1

I. THE FACTS. 2

II. THE FOURTH CIRCUIT'S DECISION. . . 2

SUMMARY OF ARGUMENT 3

REASONS FOR DENYING CERTIORARI. 3

The claims of Petitioner were finally determined against him in the courts of North Carolina and the federal trial court properly entered summary judgment against him for that reason. 3

CONCLUSION. 3

TABLE OF AUTHORITIES

Highway Beautification Act, 28 U.S.C. § 131. 2

Civil Rights Act, 42 U.S.C. § 1983 2

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Respondents

* *

BRIEF IN OPPOSITION

* *

STATEMENT OF THE CASE

Both the District Court and the Court of Appeals - the former by summary judgment, the latter by a per curiam opinion - have held

that the claims of the Petitioner are barred by the doctrine of res judicata. He asserted those claims, including that which he now attempts to assert under the Highway Beautification Act, 23 U.S.C. 131, several years ago in the courts of North Carolina, and by final judgment of the North Carolina Court of Appeals, those claims were denied.

I. THE FACTS

The Petitioner owned some thirty "off-premises" billboards in the Town of Nags Head, North Carolina. The Town enacted an ordinance prohibiting such billboards, and gave the Petitioner five years and eight months to remove them. He did not do so, and after the removal period expired, filed suit in the courts of North Carolina, asserting various theories for relief including claims under the Highway Beautification Act, 28 U.S.C. 131, and 42 U.S.C. 1983. All of these claims were rejected by the courts of North Carolina, in a final judgment of the North Carolina Court of Appeals. The Petitioner never sought review from this Court. Months later, he filed the instant action in the United States District Court, which disposed of it by summary judgment.

II. THE FOURTH CIRCUIT'S DECISION

An appeal to the Fourth Circuit resulted in affirmance per curiam, stating, (Petition, p 27):

> "Res judicata bars Givens' claims. Givens had an opportunity to argue and fully argued each claim asserted herein before the North Carolina

Court of Appeals, which found constitutional and enforceable the Town's ordinance. Givens cannot relitigate such claims in this court."

SUMMARY OF ARGUMENT

This is a classic case for the application of the doctrine of res judicata and the doctrine was properly applied.

REASONS FOR DENYING CERTIORARI

The Petitioner, many years ago, elected to litigate his claims in state court. It lost, and made no effort to bring the case here. The thirteenth-hour attempt to replay the game from the beginning was properly discountenanced by the federal courts, and their disposition of the matter by summary judgment and per curiam affirmance is ample evidence that the matter was cut and dried. The Petitioner has had its day in the court of its choice; it was not entitled to a second day in the courts of another sovereignty.

CONCLUSION

Because the Petitioner has already unsuccessfully litigated its claims, the Petition for Certiorari should be denied.

Respectfully submitted,

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